ORIGINAL

DOW, LOHNES & ALBERTSON
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
1200 NEW HAMPSHIRE AVENUE, N.W. · SUITE 800 · WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 · FACSIMILE 202-776-2222

DOCKET FILE COPY ORIGINAL

EX PARTE OR LATE FILED

MAR 2 2 1996

March 22, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *Ex Parte* Communication in CC Docket No. 95-185

Dear Mr. Caton:

Cox Enterprises, Inc. ("Cox"), by its attorneys, submits this *ex parte* letter for incorporation into the above-referenced proceeding.[1/] This letter responds to an *ex parte* letter jointly filed by Bell Atlantic Corporation and Pacific Telesis Group on March 13, 1996 in CC Docket No. 95-185.[2/] It also supplements the analysis of the Commission's jurisdiction provided in Cox's comments in this proceeding.

The BOC *Ex Parte* characterizes Cox's analysis of the Commission's jurisdiction over CMRS interconnection as "an elaborate statutory maze" that the Commission should not attempt to navigate. In fact, the process of determining the Commission's jurisdiction is much more like connecting the dots. There is a straightforward path that results in a clear picture and demonstrates that the Commission has the authority to regulate all CMRS interconnection. There also are several alternative paths by which the Commission can reach the same result.

1/ In accordance with Section 1.1206 of the Commission's Rules, the original and two copies of this letter are being filed with the Secretary's office.

2/ *See* Letter from Michael K. Kellogg, Counsel for Bell Atlantic Corp. and Pacific Telesis Group to William F. Caton, Acting Secretary, Federal Communications Commission, file in CC Docket No. 95-185, on March 13, 1996 (the "BOC *Ex Parte*").

No. of Copies rec'd 0+2
List ABCDE

THE COMMISSION'S EXISTING JURISDICTION UNDER SECTIONS 2(B) AND 332

The BOC *Ex Parte* relies in large part on Bell Atlantic's and Pacific's view of Sections 251 and 252 of the Telecommunications Act of 1996 (the "TCA"), but that is not where the Commission should start its analysis. Instead, the Commission must begin with Sections 2(a) and 2(b) of the Communications Act. Section 2(a) grants the Commission broad authority to regulate communications across the nation. Section 2(b) limits this broad authority to some extent by "fencing off" "intrastate" matters from Commission jurisdiction and reserving them to state authorities.[3/] Nothing in the TCA disturbs this jurisdictional scheme.[4/]

Section 2(b) is a simple provision, but it is extraordinarily important. Without Section 2(b), there would be no bar to complete Commission displacement of state authority. *See Houston, E. & W. T. R.. Co. v. United States,* 234 U.S. 342 (1913) (construing predecessor provision of Section 2(a) in the Interstate Commerce Commission's authorizing legislation). Thus, it is highly significant that, in the 1993 Budget Act, Congress expressly amended Section 2(b) to move the "fence" and bring CMRS under the Commission's sole jurisdiction. In relevant part, Section 2(b) now reads as follows:

> *Except as provided in . . . Section 332 . . .* nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to . . . intrastate communication service by wire or radio of any carrier[.]

47 U.S.C. § 152(b) (emphasis added). In other words, the limitations that otherwise would restrict the Commission's jurisdiction over "intrastate" CMRS no longer apply, because Section 2(b) says they do not. While the BOC *Ex Parte* devotes considerable attention to various side issues (discussed below), it does not address the impact of amended Section 2(b), presumably because the BOCs' entire theory would fall apart if it did.

The amendment to Section 2(b), in turn, leads directly to Section 332. Through Section 332, the Budget Act vests the Commission with exclusive jurisdiction over all aspects of CMRS interconnection, including LEC-to-CMRS interconnection. As Cox has demonstrated in previous filings, the Budget Act specifically assigned jurisdiction over interconnection to the Commission

---

3/ *See* 47 U.S.C. § 152(b); *Louisiana Public Serv. Comm'n v. FCC*, 476 U.S. 355, 370 (1986) ("*Louisiana PSC*").

4/ *See* discussion *infra* at pp. 4-7.

through Section 332(c)(1).[5/] Section 332(c)(1)(A) makes clear that CMRS providers are to be treated as common carriers for the purposes of Section 201.[6/] Section 332(c)(1)(B) gives the Commission authority over LEC-to-CMRS interconnection. 47 U.S.C. § 332(c)(1)(B) (upon request of a CMRS provider, "the Commission shall order a common carrier to establish physical connections with such service provider pursuant to the provisions of Section 201 of this Act").

The final line to be connected, therefore, is from Section 332 to Section 201. Section 332(c)(1) requires interconnection in accordance with the requirements of Section 201. 47 U.S.C. § 332(c)(1)(A), (B). The Commission's Section 201 authority empowers it to set the rates, terms and conditions of interconnection for carriers subject to the Commission's jurisdiction. 47 U.S.C. § 201. By including CMRS providers in the category of carriers that fall within the Commission's jurisdiction, Sections 332(c)(1) and 201 in concert give the Commission the power to set the rates, terms and conditions of CMRS interconnection.[7/] Notably, this authority applies regardless of whether the CMRS traffic at issue is conceptually inter- or intrastate. Indeed, because Section 201 already gave the Commission power over interstate interconnection between LECs and CMRS providers, the only reason for Congress to include Section 332 (c)(1)(B) would be to extend the Commission's power to encompass as well all other LEC-to-CMRS interconnection.

This analysis is quite straightforward and simple, not at all convoluted as Bell Atlantic and Pacific claim. Moreover, the Commission is required to interpret the statute as a whole. It is unfortunate that Bell Atlantic and Pacific have such disdain for statutory interrelationships

---

5/ *See* Cox February 28 *Ex Parte*; *Ex Parte* Letter from Werner K. Hartenberger, Counsel for Cox Enterprises, Inc. to William F. Caton, Secretary, Federal Communications Commission, filed on October 16, 1995, in CC Docket No. 94-54 ("Cox October 16 *Ex Parte*").

6/ 47 U.S.C. § 332(c)(1)(A) (a CMRS provider shall "be treated as a common carrier," including for the purposes of Section 201). Section 332(c)(3)(A) emphasizes this point by providing that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service[.]" 47 U.S.C. § 332(c)(3)(A). As discussed below on pages 9-10, this language encompasses state regulation of CMRS interconnection rates and also, given the mutual nature of interconnection arrangements, necessarily governs both sides of the LEC-CMRS interconnection transaction.

7/ Rather than providing its own analysis of Sections 2(b) and 332, the BOC *Ex Parte* claims that adopting Cox's analysis would require the Commission to overrule existing precedent. As described on pages 10-12, that claim is incorrect.

(which they refer to as "mazes"), given that reading the entire text of a law, rather than merely a few snippets, is a primary requirement of faithful and complete statutory construction.[8/]

THE EFFECTS OF THE TELECOMMUNICATIONS ACT OF 1996

The true focus of the BOC *Ex Parte* is the impact of new Section 251 on the Commission's pre-existing interconnection authority. Section 251 of the TCA generally imposes mandatory interconnection duties upon local exchange carriers and incumbent local exchange carriers. 47 U.S.C. § 251. Section 252, in addition to allowing LECs and other telecommunications carriers to enter into voluntarily negotiated interconnection agreements, creates a state arbitration and agreement approval process. 47 U.S.C. § 252. The BOC *Ex Parte* claims that the specific requirements of Sections 251 and 252 now govern "all local interconnection agreements," including all interconnection previously within the Commission's jurisdiction.[9/] In other words, Bell Atlantic and Pacific claim that the Section 251 regime displaces the Commission's existing authority and diminishes the Commission's power over interconnection — including interconnection relating exclusively to interstate traffic — previously within its jurisdiction. That is not what the statute says and is not what Congress intended. The BOC *Ex Parte* identifies no specific provision that would accomplish this feat. In fact, Sections 251 and 252 expand the Commission's jurisdiction without diminishing its existing powers.

Section 251(i) directly contradicts the BOC *Ex Parte* and shows that Section 251 adds to, rather than subtracts from, the Commission's authority. It states that: "Nothing in [Section 251] shall be construed to limit or otherwise affect the Commission's authority under [S]ection 201." 47 U.S.C. § 251(i). In other words, the Commission's existing jurisdiction remains intact and any further power granted by the TCA is *in addition* to the jurisdiction over interconnection

---

8/ *See, e.g., Crandon v. U.S.*, 494 U.S. 152, 158 (1990) (the Supreme Court looks to "design of statute as a whole"); *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985) (statutes should be interpreted so as not to render one part inoperative); *see also* 2A Sutherland Stat. Const. § 46.05 (statutes are "passed as a whole and not in parts or sections") and § 46.06 ("A statute should be construed so that effect is given to all its provisions").

9/ BOC *Ex Parte* at 6-7. The BOCs' expansive view of the reach of Sections 251 and 252 does not extend to access charges. *Id.* at 7 n.9 (stating that interconnection for access purposes is not subject to Section 251). While Cox does not express a view here on the merits of this argument, there is no principled basis for the BOCs to argue that Section 251 maintains the Commission's existing jurisdiction over certain services but divests it of jurisdiction over other services.

issues already given to the Commission prior to enactment of the TCA.[10/] Thus, pursuant to Section 251(i), the Commission's existing authority over interconnection, provided through Section 201, remains in place. Because Section 332(c)(1) applies the Commission's Section 201 powers to CMRS and also remains in full force and effect, the Commission retains its authority over CMRS interconnection as well.

The BOC *Ex Parte* responds to the plain language of Section 251(i) by claiming that Sections 251 and 252 govern "all local interconnection arrangements," intrastate or interstate. BOC *Ex Parte* at 6-7. If that were true, then the Section 201 savings clause in Section 251(i) would have no meaning in the context of the TCA because it would have no effect. Such an interpretation is heavily disfavored under traditional canons of statutory construction.[11/] That interpretation also is contradicted by the TCA Conference Report, ignored by the BOC *Ex Parte*, which states unequivocally that:

> New subsection 251(i) makes clear the conferees' intent that the provisions of new section 251 are *in addition to, and in no way limit or affect, the Commission's existing authority* regarding interconnection under section 201 of the Communications Act.[12/]

Despite the BOC *Ex Parte*'s colorful characterizations of Section 251(i) as a "back door" and a "trojan horse",[13/] in point of fact Section 251(i) is an explicit savings clause that the Commission and the courts must obey.[14/] Moreover, this view is fully consistent with the broad

---

10/ The BOC *Ex Parte* appears to argue that this language somehow also means that Section 251 does not expand the Commission's powers. That view is inconsistent with the language of Section 251(i) and, as shown below, with the legislative history of the TCA.

11/ As one of the principal authorities on statutory construction explains, "A statute should be construed so that effect is given to all its provisions." 2A Sutherland Stat. Const. § 46.06. *See also* sources cited *supra* note 8

12/ *See* Joint Explanatory Statement of the Committee of Conference *reprinted in* 142 Cong. Rec. H1107, H1110 (daily ed. January 31, 1996) ("TCA Conference Report") (emphasis added).

13/ *See* BOC *Ex Parte* at 6-7.

14/ *See Louisiana PSC*, 476 U.S. at 373, 376-7 n.5 (the Supreme Court describes the "savings clause" of Section 2(b) as a "rule of statutory construction . . . . [that] presents its own specific instructions regarding the correct approach to the statute which applies to how

(continued...)

thrust of the TCA, which extends rather than restricts the Commission's powers over issues formerly reserved to the states, including interconnection.

The BOC *Ex Parte* does not stop by claiming that Section 251(i) fails to preserve the Commission's pre-existing jurisdiction. It goes even further afield from the plain meaning of the TCA by arguing that, even if the Commission's pre-existing jurisdiction were preserved, the Commission still would be bound to apply the standards of Sections 251 and 252 to the services that remained in its jurisdiction. BOC *Ex Parte* at 7-8. This hypothesis makes no sense and begs the question of why Section 251(i) was adopted in the first place. More important, if Congress had meant for the Commission's Section 201 powers to be bounded by the requirements of Section 251, it would have said so. Instead, Congress did exactly the opposite by specifically preserving the Commission's existing powers, which include setting rates for services subject to Section 201.[15/]

Finally, to adopt the interpretation of the TCA advanced in the BOC *Ex Parte*, the Commission would have to hold that the TCA implicitly repealed all or parts of Sections 2(a), 2(b), 201 and 332 of the Communications Act. There is no evidence that Congress intended such a result, either from the text of the TCA or the legislative history. In fact, as shown above, Congress adopted Section 251(i) to avoid conflicts with the Commission's existing authority. Basic principles of statutory construction heavily disfavor interpretations that require implicit repeals of existing statutes.[16/] In light of the explicit Congressional direction to the

---

14/ (...continued)
we should read [the substantive framework of Title II])."

15/ The BOC *Ex Parte* takes one last shot at the effect of Section 251(i) by suggesting that, as a "general" provision, it is trumped by the "specific" provisions of the rest of Section 251. As the case cited by Bell Atlantic and Pacific demonstrates, that proposition of statutory construction applies only when there is a conflict between two provisions. *Ohio Power Co. v. FERC*, 954 F.2d 779, 784-85 (D.C. Cir. 1992) ("when a conflict arises between specific and general provisions of the same legislation" the specific provision should be applied). Here, Section 251(i) does not create a conflict but instead resolves one by specifically retaining the Commission's existing authority over those matters that already were within its jurisdiction and excepting those matters from the rest of Section 251.

16/ *See St. Martin Evangelical Lutheran v. South Dakota,* 451 U.S. 772, 787-88 (1981) (where "legislative history does not reveal any clear intent to repeal" or "alter [the] meaning" of a provision, there is no repeal by implication) *citing Morton v. Mancari,* 417 U.S. 535, 550 (1974); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 154-56 (1976) (where "it is possible (continued...)

contrary, the Commission cannot adopt an interpretation of Section 251 that, by implicit repeal, shrinks its jurisdiction over interconnection.

In sum, there is no support for the interpretation proposed by the BOC *Ex Parte*. In light of the actual language of Section 251(i), the continued vitality of Sections 2(a), 2(b), 201 and 332, and the express direction of Congress in the TCA Conference Report that the provisions of Section 251 "are in addition to and in no way limit or affect, the Commission's existing authority" under Section 201, it is obvious that the interpretation of 251(i) put forth in the BOC *Ex Parte* is nonsensical.

THE COMMISSION'S JURISDICTION UNDER *LOUISIANA PSC*

As the discussion above shows, the Commission has jurisdiction over CMRS interconnection through Sections 201 and 332. Because Section 332 has been exempted from the "jurisdictional fence" of Section 2(b)(1), there is no need to review the Commission's jurisdiction under *Louisiana PSC*. It is quite clear that what Congress did in amending Section 2(b) was to exempt CMRS from the requirements of that provision, so the *Louisiana PSC* standards do not apply.[17/] If, however, the Commission did engage in a review under the *Louisiana PSC* standards, its analysis still would support a conclusion that the Commission has jurisdiction over all CMRS interconnection rates.

As a threshold matter, the Commission should recognize that its ability to preempt state intrastate interconnection determinations has been enhanced by new Section 251(d)(3) of the

---

16/ (...continued)
for the statutes to coexist," even if it is inconvenient for them to do so, "they are not so repugnant to each other as to justify a finding of an implied repeal by this Court").

17/ When, as here, Congress has adopted statutory language that grants the Commission authority over what otherwise would be intrastate services, *Louisiana PSC* is inapposite. The fatal flaw in the Commission's jurisdictional argument in *Louisiana PSC* was that Congress had not granted the Commission jurisdiction over depreciation matters in Section 2(b). If Section 2(b) had been amended to exempt depreciation rates, then *Louisiana PSC* would have been decided differently. *Louisiana PSC*, 476 U.S. at 377 n.5 (the Supreme Court states that "the Act itself, in § []2(b), presents its own specific instructions regarding the correct approach to the statute which applies to how we should read [the depreciation provisions of] §220."). Here, Congress has granted the Commission jurisdiction over CMRS through the Budget Act amendments. In short, *Louisiana PSC* is irrelevant in circumstances, such as CMRS interconnection, in which Section 2(b) has expressly granted the Commission jurisdiction.

Communications Act. Section 251(d)(3) adopts a more liberal test than the requirements of *Louisiana PSC*.[18/] Under Section 251(d)(3), the Commission may preempt a state regulation or decision that *either* is inconsistent with the requirements of Section 251 *or* substantially prevents the implementation of Section 251 or the purposes of the competitive markets provisions of the 1996 Act. Thus, to the extent that the Commission determines that a state's intrastate interconnection policy or rate is contrary to the federal policy of encouraging competition with incumbent landline carriers, it has the power to preempt the state.[19/]

There are many ways in which state actions could frustrate the Congressional intent to assure the swift emergence of wireless competition. For example, requiring individual state negotiations for wireless interconnection would seriously delay the deployment of nationwide wireless networks such as Sprint Spectrum. At the same time, and as discussed below, because the Commission indisputably has jurisdiction over the CMRS-to-LEC half of the interconnection equation, letting states regulate the other half of the equation would likely undermine the Commission's implementation of the pro-competitive policies embodied in the TCA and the 1993 Budget Act. Indeed, states already have shown they will use interconnection policies to rein in potential competition from CMRS providers.[20/] Accordingly, even if Section 251(d)(3) were the only source of Commission authority to assert its jurisdiction and preempt state wireless interconnection policies, these facts would be sufficient to justify such action.[21/]

Moreover, even assuming the Commission's preemptive powers had *not* been strengthened by Section 251(d)(3) of the TCA, the Commission also would have had the power

---

18/ Under *Louisiana PSC*, the Commission may preempt state regulation when the state regulation frustrates a valid federal purpose and it is "not possible to separate the interstate and intrastate components of the asserted FCC regulation." *Louisiana PSC*, 476 U.S. at 734 n.4.

19/ Inexplicably, the BOC *Ex Parte* treats Section 251(d)(3) as a limitation on the Commission's authority. BOC *Ex Parte* at 3. In fact, this provision grants the Commission broader authority to preempt state actions that are inconsistent with either the specific "requirements" of Section 251 or the expansive "purposes" of Part B of Title II to encourage competition. 47 U.S.C. § 251(d)(3)(C). This power is much broader than the preemption permitted the Commission under current interpretations of *Louisiana PSC*.

20/ For instance, a state could allow a LEC to charge a CMRS provider highly inflated CMRS interconnection rates that would preclude CMRS competition in the local residential telephone service market. *See infra* note 24.

21/ The ability of the states to vitiate the important federal policy favoring competition adopted by the Budget Act and the TCA also satisfies the "frustration" prong of the *Louisiana PSC* test.

to preempt state regulation of CMRS interconnection under prior law. While Congressional action in adopting both the 1993 Budget Act and the 1996 Act renders this exercise unnecessary, the precedent governing the extent of the Commission's authority under Section 2(b) gives the Commission the power to exert jurisdiction over LEC-to-CMRS interconnection. Under *Louisiana PSC* and the *North Carolina Utility Commission* cases, the Commission could preempt state regulation of intrastate services if it is "not possible to separate the interstate and intrastate components of the asserted FCC regulation." *Louisiana PSC,* 476 U.S. at 375 n.4. Inseverability has been recognized most notably in the context of interconnection of customer premises equipment with the public switched network, where the federal policy of detariffing trumped state tariffing requirements.

It is unarguable that the Commission has jurisdiction over all interstate interconnection and, by virtue of Sections 332(c)(1)(A) and 332(c)(3)(A), over the rates charged by CMRS providers for all interconnection.[22/] Ignoring for the moment the effect of Section 332(c)(1)(B) and its grant of sole authority over CMRS interconnection to the Commission, it may be suggested that intrastate interconnection from local exchange carriers to CMRS providers has been left within the states' jurisdiction. In practice, however, it is impossible to separate CMRS-to-LEC interconnection from LEC-to-CMRS interconnection, because it is all one transaction. Indeed, some LECs, including Pacific, actually claim that the rates they now charge for interconnection already are net rates, *i.e.,* they encompass both the LEC's charge to the CMRS provider and the CMRS provider's charge to the LEC.[23/] Thus, because interconnection negotiations encompass both sides of the same equation, the Commission's failure to claim its jurisdiction over LEC-to-CMRS interconnection effectively would abdicate jurisdiction over CMRS-to-LEC interconnection as well.

Moreover, the Commission simply cannot parse CMRS interconnection into "federal" and "state" segments with separate spheres of responsibility. As noted above, even under the most restrictive theory of its authority, the Commission plainly has jurisdiction over most elements of the interconnection equation. It cannot cede that jurisdiction to the states. If, however, the

---

22/ *See* discussion *supra* at pp. 2-3 & note 6. LEC comments also recognize that the rates LECs charge CMRS providers for interconnection are reflected in the rates charged to CMRS end user customers.

23/ *See* Comments of Pacific at 79 (bilateral interconnection negotiations lead to charge from LEC for interconnection and no charge from CMRS provider); *see also* Comments of United States Telephone Association at 5 ("Rather, LECs and CMRS providers may negotiate mutually acceptable terms whereby the LEC compensates the CMRS provider for terminating LEC-originated traffic through a reduction in the rate it otherwise would charge the CMRS provider for terminating CMRS-originated traffic.").

power devolves to the states to determine the "LEC" portion of interconnection rates, experience shows that LECs will manipulate the process to maintain excessive interconnection charges that prevent CMRS providers from competing in the local telephony marketplace.[24/] Because the Commission has the authority to prevent this anticompetitive outcome, which seriously undermines the strong federal interest in promoting local exchange competition, it should not permit this practice to persist.[25/]

CMRS interconnection also is physically inseverable. CMRS market boundaries — MSAs, MTAs, BTAs and regional cellular and ESMR coverage areas — have been drawn without regard for state boundaries, and the radio signals used to carry CMRS traffic do not respect state lines. Moreover, it is difficult if not impossible for LEC and CMRS networks to determine not only whether a particular CMRS call should be classified as interstate or intrastate in nature but also what proportion of calls would be deemed interstate or intrastate. These physical characteristics of CMRS, coupled with an interest in promoting the rapid deployment of wireless networks nationwide, prompted Congress to adopt the Budget Act amendments to Section 332. As the House Report on the Budget Act explains, the jurisdictional provisions of Section 332 are intended "[t]o foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[26/] This statement succinctly describes why Congress chose to vest the Commission with sole authority over CMRS interconnection issues.

THE EFFECTS OF PRIOR COMMISSION DECISIONS

The BOC *Ex Parte* also argues that Section 332 did not federalize CMRS interconnection because various Commission decisions would have to be overruled. Indeed, this is the sum of the BOCs' argument against Cox's analysis of Sections 2(b) and 332; the BOC *Ex Parte* does not even argue that these cases were decided correctly. Review of those decisions shows, however, that they have no effect on the Commission's power to determine that it has jurisdiction over the rates, terms and conditions of CMRS interconnection.

24/ Experience in several states also suggests that, without FCC intervention, state commissions may act to deny CMRS providers the benefit of more reasonable interconnection arrangements available to landline facilities-based competitors. *See* Comments of Comcast at n.102.

25/ This federal interest has been highlighted by the passage of the TCA.

26/ H.R. Rep. No. 103-111, at 260. In this connection, it is noteworthy that Section 332 maintains Commission jurisdiction even in cases where Section 221(b) would give a state jurisdiction over "local interstate" traffic. *See* 47 U.S.C. § 332(c)(3).

First, the BOC *Ex Parte* contends that the Commission's statement in the *CMRS Second Report and Order* that "revised Section 332 does not extend the Commission's jurisdiction to the regulation of local CMRS rates" would have to be overruled. 9 FCC Rcd 1411, 1480 (1994). That issue, of course, is the subject of pending reconsiderations of the *CMRS Second Report and Order.*[27/] Thus, it is not a final order and has no precedential effect in the current proceeding.

Second, the BOC *Ex Parte* claims that the Commission has concluded that Section 332(c)(3)(A) only covers rates charged by CMRS providers to subscribers, not LEC-to-CMRS interconnection agreements. BOC *Ex Parte* at 8 *citing Petition on Behalf of the Louisiana Public Serv. Comm'n for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana*, 10 FCC Rcd 7898, 7908 (1995). While the BOC *Ex Parte* cites the *Louisiana* decision as finding that state regulators have authority over CMRS interconnection, that decision actually denied the Louisiana Commission's petition to retain regulatory authority and did not address the Commission's jurisdiction under Section 332(c)(1). Moreover, the order itself makes plain that it is not intended to be the Commission's final word on the subject of jurisdiction, describing its "comment" on Louisiana's regulatory authority as "preliminary," saying that it "appears" the Louisiana Commission may have certain powers, and inviting parties to seek reconsideration on any specific regulations they believe should be preempted. *Id.* at ¶¶43, 47, 48. In addition, the Commission has specifically invited comment on whether to reconsider this decision.[28/]

Third, the BOC *Ex Parte* relies on a 1987 Commission finding that LEC-to-cellular interconnection rates are "severable." BOC *Ex Parte* at 9, *citing The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Declaratory Ruling, 2 FCC Rcd 2910, 2912 (1987) (the *"Cellular Interconnection Order"*). The BOCs fail to explain, however, how a declaratory ruling issued six years before the Budget Act amended both Section 2(b) and Section 332 — and premised on the specific provision of Section 2(b) that

---

27/ McCaw Cellular Communications, Inc., Petition for Clarification, at 5, filed in GN Docket No. 93-252, on May 19, 1994; MCI Telecommunications Corp., Petition for Clarification and Partial Reconsideration, at 14, filed in GN Docket No. 93-252, on May 19, 1994.

28/ *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, CC Docket No. 95-185, 94-54, FCC 95-505, at ¶ 112 n.162 (released January 11, 1996).

later was amended in 1993 — can have any effect on the Commission's interpretation of those provisions as amended.[29/]

CONCLUSION

The Commission has exclusive and plenary federal jurisdiction over all rates, terms and conditions regarding interconnection between LECs and CMRS providers. Bell Atlantic and Pacific would create many unnecessary problems for the Commission by reading more into the TCA than is actually there. Their wishful misinterpretation of the nation's communications law may be creative, but nothing more. Cox urges the Commission to heed the reasoned statutory framework established by the Budget Act of 1993, the Communications Act and the TCA.

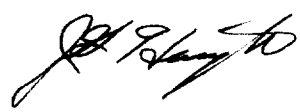
When interpreting these enabling statutes, the Commission also must not lose sight of the policy implications of its jurisdictional conclusions. Cox's interpretation of the Commission's jurisdiction is consistent with the Congressional vision of increased competition in the telecommunications marketplace, expressed in both the 1993 Budget Act and the TCA. The BOC *Ex Parte* stands that vision on its head by claiming that the Commission lacks the power to adopt rules that will make it possible for wireless providers to compete effectively with landline carriers such as Bell Atlantic and Pacific. Cox's interpretation also is consistent with the Congressional intent to benefit CMRS providers in the 1993 Budget Act and to benefit competitors in the TCA. The BOC *Ex Parte* asks the Commission to adopt a legal interpretation of those statutes that would benefit incumbent landline carriers at the expense of CMRS

29/ The BOC *Ex Parte* makes this assertion because it claims that "Cox's argument depends on the further point that the interstate and intrastate aspects of CMRS are inseverable." BOC *Ex Parte* at 9. This claim, willfully or not, misstates Cox's jurisdictional analysis. In fact, while the Commission could choose to exert jurisdiction on inseverability grounds, nothing about Cox's analysis depends on the inseverability of CMRS interconnection. As described above, the 1993 Budget Act gave the Commission sole jurisdiction over all aspects of CMRS interconnection, whether or not they were severable. Nevertheless, it is true that CMRS-to-LEC interconnection (which even the BOCs concede falls within the Commission's jurisdiction under Section 332 as amended) and LEC-to-CMRS interconnection cannot be separated because they are two halves of a single transaction. As noted above, this point is underscored by LEC claims that current CMRS interconnection rates include compensation to the CMRS provider for termination of LEC traffic. *See supra* footnote 23. The *Cellular Interconnection Order* did not consider this issue because it was decided six years before the Budget Act amended Section 2(b) and gave the Commission its unchallenged power over CMRS-to-LEC interconnection. Consequently, it has no precedential effect in this proceeding.

providers. When these policy concerns are combined with the formidable legal case for Commission jurisdiction, it is evident that the BOC *Ex Parte* should be given no weight.

In short, the Commission should exercise the plenary authority that these laws rightfully reserve to it to establish a uniform, federal framework for LEC-to-CMRS interconnection. When pressed in the future to read a new statute, moreover, Bell Atlantic and Pacific should keep in mind the words of the well-respected jurisprudential scholar, Karl Llewellyn, who said that: "if wishes were horses, then beggars would ride." The Commission should not give in to the wishful thinking of Bell Atlantic and Pacific, but should stand on the strong jurisdictional base provided to it for regulation of CMRS interconnection.

Respectfully submitted,



Werner K. Hartenberger
J.G. Harrington

Counsel for Cox Enterprises, Inc.